

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA
JOHNSTOWN DIVISION**

ANTHONY J. ZANGHI, KENNETH J. SOWERS, DOMINIC MCCUCH, JAMES HOHMAN, DARRELL SHETLER *on behalf of themselves and others similarly situated, and* UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION, AFL-CIO/CLC,

Plaintiffs,

v.

FREIGHTCAR AMERICA, INC., JOHNSTOWN AMERICA CORPORATION, and JOHNSTOWN AMERICA CORPORATION USWA HEALTH & WELFARE PLAN,

Defendants.

No.: 3:13-CV-00146

Hon. Kim R. Gibson

APPENDIX TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Defendants FreightCar America, Inc., Johnstown American Corporation, and Johnstown American Corporation USWA Health and Welfare Plan (collectively, "FreightCar") hereby submit the following Appendix pursuant to Rule 56(B)(3) of the Local Civil Rules for the Western District of Pennsylvania. The attached evidence is submitted in support of Defendants' Motion for Summary Judgment, filed simultaneously herewith.

INDEX TO APPENDIX

SJ Ex.	Document	Description	Date	Bates
1.	Christenson Decl.	Declaration of Robert C. Christenson in Support of Defendants' Motion for Summary Judgment	7/17/2014	None
2.	Christenson Decl. Ex. A	Letter from Jeanette S. Stump to Robert Christenson	10/10/1991	USW_FCA02251
3.	Christenson Decl. Ex. B	Side Letter 22 from W. G. Brader to Andrew V. Palm	10/18/1991	59 – 61
4.	Christenson Decl. Ex. C	Correspondence Between Frederick Benario and Jeanette S. Stump	3/30/1992; 4/8/1992; 4/23/1992; 5/7/1992; 6/25/1992	3217 – 3253
5.	Christenson Decl. Ex. D	Program of Insurance Benefits for Hourly Paid Employees of Bethlehem Steel Corporation	1/1/1990	USW_FCA01988 – USW_FCA02045
6.	Christenson Decl. Ex. E	Program of Hospital-Medical Benefits for Eligible Pensioners and Surviving Spouses of Bethlehem Steel Corporation	1/1/1990	None
7.	Christenson Decl. Ex. F	SPD Drafts Sent to USW for Review	6/15/1992; 7/17/1992	4889 – 5017
8.	Christenson Decl. Ex. G	Letter from Jerry Sokolow to Bob Christenson	7/31/1992	6206 – 6216
9.	Christenson Decl. Ex. H	Draft Administration Section of JAC Guide	7/10/1992	HEW000546
10.	Christenson Decl. Ex. I	Draft Administration Section of JAC Guide	09/25/1992	HEW000529
11.	Christenson Decl. Ex. J	Letter from Jerry Sokolow to Bob Christenson	1/22/1993	6196
12.	Christenson Decl. Ex. K	Letter from Robert C. Christenson to Jerry Sokolow	3/26/1993	USW_FCA01273

SJ Ex.	Document	Description	Date	Bates
13.	Christenson Decl. Ex. L	Letter from Robert C. Christenson to Keri Bancroft	04/13/1993	USW FCA 01272
14.	Christenson Decl. Ex. M	JAC Employee Guide	5/1993	1267 – 1370
15.	Christenson Decl. Ex. N	JAC Retiree Medical Plan SPD	N/A	None
16.	Garabedian Decl.	Declaration of Tom Garabedian in Support of Defendants' Motion for Summary Judgment	7/16/2014	None
17.	Howard Decl.	Declaration of Charles Howard in Support of Defendants' Motion for Summary Judgment	7/15/2014	None
18.	Howard Decl. Ex. A	1991 Agreement Between Company and Union on Behalf of Local Union 2635	10/28/1991	4684 – 4869
19.	Howard Decl. Ex. B	1994 Agreement Between Company and Union on Behalf of Local Union 2635	10/29/1994	USW_FCA00097 – USW_FCA00159
20.	Howard Decl. Ex. C	1997 Agreement Between Company and Union on Behalf of Local Union 2635	11/1/1997	None
21.	Howard Decl. Ex. D	2005 Agreement Between Company and Union on Behalf of Local Union 2635	2/25/2005	USW_FCA00314 – USW_FCA00361
22.	Howard Decl. Ex. E	2008 FCA/Union Settlement Agreement	6/19/2008	USW_FCA00543 – USW_FCA00597
23.	Howard Decl. Ex. F	FreightCar October 25, 2001 First Economic Proposal	10/25/2001	2053
24.	Howard Decl. Ex. G	November 14, 2001 Bargaining Notes	11/14/2001	Miscellaneous
25.	Howard Decl. Ex. H	FreightCar November 28, 2001 Fourth Draft Proposal	11/28/2001	Local 2635 00834

SJ Ex.	Document	Description	Date	Bates
26.	Howard Decl. Ex. I	November 28, 2001 Bargaining Notes	11/28/2001	Miscellaneous
27.	Howard Decl. Ex. J	November 29, 2001 Bargaining Notes	11/29/2001	Miscellaneous
28.	Howard Decl. Ex. K	December 18, 2001 Fifth Draft Proposal	12/18/2001	USW FCA 02962
29.	Howard Decl. Ex. L	March 6, 2002 Letter to Retirees	03/06/2002	1893
30.	Howard Decl. Ex. M	May 2002 Amendment to JAC Guide	05/07/2002	None
31.	McIver Decl.	Declaration of Claud McIver in Support of Defendants' Motion for Summary Judgment	7/17/2014	None
32.	McIver Decl. Ex. A	Agreement of Purchase and Sale Between Bethlehem Steel Corporation and Freight Car Corporation	5/3/1991	JAC002005 – JAC002071
33.	McIver Decl. Ex. B	1997 Contract Proposals to Company from Union	9/2/1997	USW_FCA01027 – USW_FCA01041
34.	McIver Decl. Ex. C	Company and Union Proposals Concerning Side Letter 22	9/29/1994; 10/18/1994; 10/21/1994	None; 5174; 5175
35.	McIver Decl. Ex. D	Steelworkers Health and Welfare Fund Plan	5/14/1998	SWHF102 – SWHF135
36.	McIver Decl. Ex. E	Steelworkers Health and Welfare Fund Summary Plan Description	3/1/1998	None
37.	McIver Decl. Ex. F	Steelworkers Health and Welfare Plan Participation Agreement	03/05/1998	None
38.	<i>Zanghi</i> Complaint	<i>Zanghi</i> Complaint	07/09/2013	None
39.	April 3, 2014 Order	April 3, 2014 Order	04/03/2014	None

SJ Ex.	Document	Description	Date	Bates
40.	Grove Dep.	Deposition of Glenn Grove	12/10/2003	None
41.	Sokolow Dep.	Deposition of Jerry Sokolow	07/10/2014	None
42.	Stump Dep.	Deposition of Jeanette Stump	07/09/2014	None
43.	Jastrzab Aff.	Affidavit of Ray Jastrzab	09/09/2002	None
44.	USW- International Dep.	USW International 30(b)(6) Deposition	05/12/2004; 05/13/2004	None
45.	USW-Local Dep.	USW Local 30(b)(6) Deposition	05/18/2004	None
46.	Karan Aff.	Affidavit of Glen Karan	08/07/2002	None
47.	NLRB Hearing Tr.	Excerpts from NLRB Hearing	10/07/2002	None
48.	NLRB Ruling	<i>In re Johnstown America</i>	04/04/2003	None
49.	<i>Deemer</i> Docket	<i>Deemer</i> Civil Docket	01/15/2014	None
50.	Cindrich <i>Deemer</i> Ruling	<i>Deemer</i> Memorandum & Opinion	07/14/2003	None
51.	<i>Britt</i> Complaint	<i>Britt</i> Complaint	08/29/2003	None
52.	<i>Sowers</i> Complaint	<i>Sowers</i> Complaint	11/14/2008	None
53.	Payne Decl.	Declaration of William Payne	07/26/2013	None
54.	Ross Decl.	Declaration of Nancy G. Ross	08/16/2013	None
55.	Stump Ex. 8	July 23, 1992 Letter Forwarding Guides	07/23/1992	6197

Dated: July 17, 2014

Respectfully Submitted,

/s/ Sam P. Myler

James Clark Munro II

Michael J. Parrish, Jr.

Ronald P. Carnevali, Jr.

SPENCE, CUSTER, SAYLOR, WOLFE & ROSE, LLC

AmeriServ Financial Building, P.O. Box 280

Johnstown, Pennsylvania 15907

T: (814) 536-0735

F: (814) 539-1423

Nancy G. Ross (*pro hac vice*)

Prashant Kolluri (*pro hac vice*)

Sam P. Myler (*pro hac vice*)

Kirk Watkins (*pro hac vice*)

MCDERMOTT WILL & EMERY LLP

227 West Monroe Street

Chicago, Illinois 60606

T: (312) 372-2000

F: (312) 984-7700

**ATTORNEYS FOR DEFENDANTS FREIGHTCAR
AMERICA, INC., JOHNSTOWN AMERICA, LLC,
AND JOHNSTOWN AMERICA CORPORATION
USWA HEALTH & WELFARE PLAN**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system this 17th day of July, 2013. Any other counsel of record will be served by facsimile transmission and/or first class mail.

/s/ Sam P. Myler
Sam P. Myler